

STATE OF TENNESSEE  
DEPARTMENT OF HEALTH

2012 NOV 28 PM 3:27

IN THE MATTER OF:

JAMES H. POGUE, M.D.  
RESPONDENT

NASHVILLE, TENNESSEE  
TENNESSEE LICENSE NO. 30361

) BEFORE THE TENNESSEE BOARD OF STATE  
) OF MEDICAL EXAMINERS

) DOCKET NO. 17.18-117418A  
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AGREED ORDER

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This matter came to be heard before the Tennessee Board of Medical Examiners (hereinafter the "Board") on the 28th day of November, 2012, pursuant to a Notice of Charges issued against James H. Pogue, M.D. (hereinafter "Respondent") by the Division of Health Related Boards of the Tennessee Department of Health, (hereinafter the "State"). The State was represented by Andrea Huddleston, Deputy General Counsel. Respondent was represented by counsel, William H. West, Esq. After consideration of the Notice of Charges and presentation of counsel, the Board finds as follows:

1. Respondent agrees that presentation to and consideration of this Agreed Order by the Board for ratification and all matters divulged during that process shall not constitute unfair disclosure such that the Board or any of its members shall be prejudiced to the extent that requires their disqualification from hearing this matter should this order not be ratified.
2. Respondent understands the nature of the charges herein alleged and that if proved at hearing, such charges and allegations would constitute cause for imposing discipline upon Respondent's license issued by the Board.

3. Respondent is aware of each of Respondent's rights, including the right to a hearing on the charges and allegations, the right to appear personally and by counsel, the right to confront and cross-examine witnesses who would testify against Respondent, the right to testify and present evidence on Respondent's own behalf, as well as to the issuance of subpoenas to compel the attendance of witnesses and the production of documents, the right to contest the charges and allegations, and other rights which are accorded Respondent pursuant to the Administrative Procedures Act and other applicable laws, including the right to seek reconsideration, review by the Chancery Court and appellate review.
4. In order to avoid the expense and uncertainty of a hearing, Respondent freely and voluntarily waives each and every one of these rights set forth above and admits the truth of the allegations herein contained. Respondent agrees that cause exists to discipline his license.
5. Respondent understands that by signing this Agreed Order, Respondent is enabling the Board to issue its order without further process. In the event that the Board rejects this Agreed Order for any reason, it will be of no force or effect for either party.

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## I. FINDINGS OF FACT

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6. Respondent has been at all times pertinent hereto licensed by the Board as a medical doctor in the State of Tennessee, having been granted Tennessee medical license number 30361 by the Board on April 14, 1998, with a current expiration date of December 31, 2012.

7. Between 2007 and 2010, Respondent failed to take an appropriate history or perform a medically appropriate physical examination and/or failed to document such, requisite to justify prescribing or dispensing of narcotics and other medications and controlled substances to the following patients (*initials used to maintain patient confidentiality*): C.A., J.A., K.A., R.A., T.A., V.A., J.B., K.A.B., L.F., A.G., L.G., I.J., N.J., J.R.K., J.S.K., J.M., T.M., J.P., A.S., M.S., W.T., and K.W.
8. Between 2007 and 2010, Respondent failed to obtain medically appropriate diagnostic tests or obtain appropriate medical consultations and/or failed to document such, requisite for the appropriate initiation and/or continuation of care for the following patients: C.A., J.A., K.A., R.A., T.A., V.A., J.B., K.A.B., L.F., A.G., L.G., I.J., N.J., J.R.K., J.S.K., J.M., T.M., J.P., A.S., M.S., W.T., and K.W.
9. Between 2007 and 2010, Respondent prescribed or otherwise distributed controlled substances to the following persons when the quantity, duration and method was such that the persons would likely become addicted to the habit of taking said controlled substances, failed to provide the patient with information about the benefits and risks of narcotics and/or other controlled substances or failed to document such and failed to make a bona fide effort to cure the habit of such persons or failed to document any such effort: J.A., K.A., R.A., T.A., V.A., J.B., K.A.B., L.F., A.G., L.G., I.J., N.J., J.R.K., J.S.K., J.M., T.M., J.P., A.S., M.S., W.T., and K.W.
10. Between 2007 and 2010, Respondent failed to formulate a written treatment plan for the following patients: Between 2007 and 2010, Respondent prescribed controlled substances to the following patients when such prescriptions were not in the course of professional practice, not in good faith to relieve pain and suffering, or not medically

necessary, advisable or justified for a diagnosed condition: J.A., K.A., R.A., T.A., V.A., J.B., K.A.B., L.F., A.G., L.G., I.J., N.J., J.R.K., J.S.K., J.M., T.M., J.P., A.S., M.S., W.T., and K.W.

11. Between 2010 and 2011, Respondent prescribed controlled substances to R.K., an immediate family member.

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## II. CONCLUSIONS OF LAW

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The facts as found in the Findings of Fact are sufficient to establish that the Respondent has violated the following statutes or rules which are part of the Tennessee Medical Practice Act, (TENN. CODE ANN. § 63-6-101, *et seq.*) for which disciplinary action before and by the Board is authorized:

12. The Findings of Fact in Paragraphs 7 through 11 of this Agreed Order constitute a violation of TENN. CODE ANN. § 63-6-214(b)(1), (4), (12), and (13):
  - (1) Unprofessional, dishonorable or unethical conduct;
  - (4) Gross malpractice, or a pattern of continued or repeated malpractice, ignorance, negligence or incompetence in the course of medical practice.
  - (12) Dispensing, prescribing or otherwise distributing any controlled substance or other drug not in the course of professional practice, or not in good faith to relieve pain and suffering, or not to cure an ailment, physical infirmity or disease, or in amounts and/or for durations not medically necessary, advisable or justified for a diagnosed condition.
  - (13) Dispensing, prescribing or otherwise distributing to any person a controlled substance or other drug if such person is addicted to the habit of using controlled substances without making a bona fide effort to cure the habit of such patient.

13. The Findings of Fact in Paragraphs 7 through 11 of this Agreed Order constitute a violation of Rule 0880-02-.14(6) of the Official Compilation Rules and Regulations of the State of Tennessee entitled General Rules and Regulations Governing the Practice of Medicine and promulgated by the Tennessee State Board of Medical Examiners which authorizes disciplinary action against a Respondent who prescribes, orders, administers or dispenses dangerous drugs or controlled substances without observing the following guidelines:

(i) After a documented medical history, which may be provided orally or in writing by the patient, and physical examination by the physician providing the medication including an assessment and consideration of the pain, physical and psychological function, any history and potential for substance abuse, coexisting diseases and conditions, and the presence of a recognized medical indication for the use of a dangerous drug or controlled substance;

(ii) Pursuant to a written treatment plan tailored for the individual needs of the patient by which treatment progress and success can be evaluated with stated objectives such as pain relief and/or improved physical and psychosocial function. Such a written treatment plan shall consider pertinent medical history and physical examination as well as the need for further testing, consultations, referrals, or use of other treatment modalities;

(iii) The physician should discuss the risks and benefits of the use of controlled substances with the patient or guardian;

(iv) Subject to documented periodic review of the care by the physician at reasonable intervals in view of the individual circumstances of the patient in regard to progress toward reaching treatment objectives which takes into consideration the course of medications prescribed, ordered, administered, or dispensed as well as any new information about the etiology of the pain;

(v) Complete and accurate records of the care provided as set forth in parts (i)-(iv) of this paragraph should be kept. When controlled substances are prescribed, names, quantities prescribed, dosages, and number of authorized refills of the drugs should be recorded, keeping in mind that pain patients with a history of substance abuse or who live in an environment posing a risk for medication misuse or diversion require

special consideration. Management of these patients may require closer monitoring by the physician managing the pain and consultation with appropriate health care professionals.

14. The Findings of Fact in Paragraphs 7 through 11 of this Agreed Order constitute a violation of Rule 0880-02-.14(7) of the Official Compilation Rules and Regulations of the State of Tennessee entitled General Rules and Regulations Governing the Practice of Medicine and promulgated by the Tennessee State Board of Medical Examiners which authorizes disciplinary action as follows:

(a) Except as provided in subparagraph (b), it shall be a prima facie violation of T.C.A. § 63-6-214(b) (1), (4), and (12) for a physician to prescribe or dispense any drug to any individual, whether in person or by electronic means or over the Internet or over telephone lines, unless the physician, or his/her licensed supervisee pursuant to appropriate protocols or medical orders, has first done and appropriately documented, for the person to whom a prescription is to be issued or drugs dispensed, all of the following:

1. Performed an appropriate history and physical examination; and
2. Made a diagnosis based upon the examinations and all diagnostic and laboratory tests consistent with good medical care; and
3. Formulated a therapeutic plan, and discussed it, along with the basis for it and the risks and benefits of various treatments options, a part of which might be the prescription or dispensed drug, with the patient; and
4. Insured availability of the physician or coverage for the patient for appropriate follow-up care.

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### III. REASONS FOR DECISION

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The Tennessee Board of Medical Examiners takes this action in order to protect the health, safety and welfare of the citizens of the State of Tennessee.

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#### IV. ORDER

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**NOW THEREFORE**, Respondent, for the purpose of avoiding further administrative action with respect to this cause, agrees to the following:

15. The Tennessee medical license of James H. Pogue, M.D., license no. 30361, is hereby placed on **SUSPENSION** for not less than six (6) months and/or until Respondent has completed the requirements in paragraph 16. Respondent must petition for an Order of Compliance and appear before the Board for the suspension of Respondent's license to be lifted.
16. During the period of suspension, Respondent shall submit to an evaluation by the Vanderbilt Comprehensive Assessment Program ("VCAP") to ensure that he does not suffer from any mental condition, including substance abuse, and to ensure that he is safe to practice medicine. Respondent shall comply with any and all recommendations contained in the evaluation report and shall ensure that a copy of the VCAP report is mailed by VCAP within ten (10) days of issuance to: Dr. Mitchell Mutter/ Medical Director. Division of Health Related Boards, 227 French Landing, Suite 300. Heritage Place Metro Center, Nashville, TN 37243.
17. Upon completion of the evaluation requirement contained in paragraph 16, *supra*, Respondent may file a Petition for Order of Compliance. Respondent must physically appear before the Board and, upon demonstrating to the Board compliance with the above requirement and that he is safe to practice medicine, Respondent's suspension may be lifted at the discretion of the Board, at which time Respondent's medical license will be placed on **PROBATION** for not less than five (5) years, effective the date of entry of

such Order of Compliance. Respondent acknowledges that such probation is an encumbrance on his license.

18. Respondent agrees to and by his signature below does hereby surrender the pain management clinic certificate held by him for Belmont Medical Group, Certificate #254.
19. Respondent agrees to and by his signature below does hereby surrender his Drug Enforcement Administration ("DEA") registrations for any and all schedules of controlled substances and agrees to not seek reinstatement of such DEA privileges until completion of the suspension and probationary period provided herein.
20. Respondent agrees to enroll in and successfully complete, within nine (9) months from the date of the entry of this order, the course entitled "*Intensive Course in Medical Record Keeping*" offered at The Case Western Reserve University Continuing Medical Education Program at The Case Western Reserve University School of Medicine located in Cleveland, Ohio (or an equivalent course approved in advance in writing by the Board's Medical Director). Any CME course hours earned from attendance and completion of the course required by this paragraph shall be in addition to the CME hours required to maintain licensure. Proof of completion should be submitted, within thirty (30) days of completion, to the **Disciplinary Coordinator, The Division of Health Related Boards, Tennessee Department of Health, Heritage Place Metro Center, 227 French Landing, Suite 201, Nashville, Tennessee 37243.**
21. Within twenty-four months from the date of entry of this order, Respondent shall complete an additional forty (40) CME hours, in addition to the CME hours required to maintain licensure. At a minimum, such additional coursework shall include a course in prescribing approved in advance in writing by the Board's Medical Director.



22. Respondent shall pay twenty-two (22) Type "A" Civil Penalties in the amount of one thousand dollars (\$1,000.00) each for a total of twenty-two thousand dollars (\$22,000.00), representing a violation for each patient chart referenced in the Findings of Fact, *supra*.
23. Any and all civil penalties shall be paid in full within twelve (12) months of the entry of this Order. Payment shall be made by **certified check, cashier's check, or money order**, payable to the **State of Tennessee, Department of Health**. Any and all payments shall be forwarded to the **Disciplinary Coordinator, The Division of Health Related Boards, Tennessee Department of Health, Heritage Place Metro Center, 227 French Landing, Suite 201, Nashville, Tennessee 37243**. A notation shall be placed on said money order or such check that it is payable for the Civil Penalties of James H. Pogue, M.D., Docket No. 17.18-117418A.
24. Respondent must pay, pursuant to TENN. CODE ANN. § 63-6-214(k) and Rule 0880-2-.12(1)(j) of the TENN. COMP. R. & REGS., the actual and reasonable costs of prosecuting this case to the extent allowed by law, including all costs assessed against the Board by the Division's Bureau of Investigations in connection with the prosecution of this matter. These costs will be established by an Affidavit of Costs prepared and filed by counsel for the Department. Said costs shall not exceed fifty thousand dollars (\$50,000.00).
25. Any and all cost shall be paid in full within twelve (12) months after the issuance of the Affidavit of Costs. Payment shall be made by **certified check, cashier's check, or money order**, payable to the **State of Tennessee, Department of Health**. Any and all payments shall be forwarded to the **Disciplinary Coordinator, The Division of Health Related Boards, Tennessee Department of Health, Heritage Place Metro Center, 227**

**French Landing, Suite 201, Nashville, Tennessee 37243.** A notation shall be placed on said money order or such check that it is payable for the Affidavit of Costs of James H. Pogue, M.D., Docket No. 17.18-117418A.

26. During the period of suspension and probation, Respondent shall maintain good and lawful conduct and any violation of law will be a violation of the terms of this Order.
27. Upon completion of the probationary period provided herein, Respondent may file a Petition for Order of Compliance. Respondent must physically appear before the board and, upon demonstrating to the Board compliance with all requirements contained herein, the probation of Respondent's medical license may be lifted at the discretion of the board.

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#### **V. REPRESENTATIONS OF RESPONDENT**

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28. Respondent understands that this **SUSPENSION/ PROBATION** is a formal disciplinary action and will be reported to the Health Integrity and Protection Data Bank (H.I.P.D.B.) and/or similar agency.
29. Respondent understands and admits the allegations, charges, and stipulations in this Order.
30. Respondent understands the rights found in the Practice Act and the Uniform Administrative Procedures Act, TENN. CODE ANN. §§ 4-5-101 thru 4-5-404, including the right to a hearing on the Notice of Charges to contest the charges and allegations, the right to appear personally and by legal counsel, the right to confront and to cross-examine witnesses who would testify against Respondent, the right to testify and to present evidence on Respondent's own behalf, as well as to the issuance of subpoenas to compel

- the attendance of witnesses and the production of documents, as well as the right to appeal for judicial review.
31. Respondent voluntarily, knowingly, and intelligently waives each and every right set forth above.
  32. Respondent agrees that his medical license is subject to discipline and he agrees to be bound by the Board's terms as set forth in this Order.
  33. Respondent agrees that presentation to and consideration of this Agreed Order by the Board for ratification and all matters divulged during that process shall not constitute unfair disclosure such that the Board or any of its members shall be prejudiced to the extent that requires their disqualification from hearing this matter should this Order not be ratified. Likewise, all matters, admissions and statements disclosed or exchanged during the attempted ratification process shall not be used against the Respondent in any subsequent proceeding unless independently entered into evidence or introduced as admissions.
  34. Respondent understands that by signing this Agreed Order, Respondent is allowing the Board to issue its Order without further process. In the event that the Board rejects this Agreed Order for any reason, it will be of no force or effect for either party.

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## VI. NOTICE

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35. This Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. This Order shall supersede any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments, written or oral. This Order may not be altered, amended,

modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

This **AGREED ORDER** was approved by a majority of a quorum of the Tennessee Board of Medical Examiners at a public meeting of the Board and signed this 27 day of November, 2012.

Michael Zanolli  
Chairperson  
Tennessee Board of Medical Examiners

**APPROVED FOR ENTRY:**

James H. Pogue  
James H. Pogue, M.D.  
Respondent  
Tennessee License Number 30361

11/21/2012  
DATE

William H. West  
William H. West, Esq.  
Attorney for Respondent  
Baker Donelson  
Baker Donelson Center  
Suite 800  
211 Commerce Street  
Nashville, Tennessee 37201  
(615) 726-5600

11/21/2012  
DATE

Andrea Huddleston  
Andrea Huddleston (B.P.R. #016155)  
Deputy General Counsel  
Office of General Counsel  
Tennessee Department of Health  
Plaza I, Suite 210  
220 Athens Way  
Nashville, Tennessee 37243  
(615) 741-1611

11-27-12  
DATE

### CERTIFICATE OF FILING

This Order was received for filing in the Office of the Secretary of State, Administrative Procedures Division, and became effective on the 28<sup>th</sup> day of November, 2012.

Thomas G. Stovall  
Thomas G. Stovall, Director  
Administrative Procedures Division *MFL*

### CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this document has been served upon Respondent, James H. Pogue, M.D., 5552 Franklin Pike, Suite 100, Nashville, Tennessee 37220, by delivering same in the United States Mail, Certified Number 1611 1150 000152196961, return receipt requested, and by United States Mail First Class Postage Pre-Paid Mail, with sufficient postage thereon to reach its destination.

This 28<sup>th</sup> day of November, 2012

Andrea Huddleston  
Andrea Huddleston  
Deputy General Counsel  
Tennessee Department of Health